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IN THE

Supreme Court of the United States

October Term, 1954 No. 163

CHARLES LAWLOR and MITCHELL PANTZER, co-partners trading as INDEPENDENT POSTER EXCHANGE,

Petitioners

vs.

NATIONAL SCREEN SERVICE CORPORATION, COLUMBIA PICTURES CORP., LOEW'S INCORPORATED, RKO RADIO PICTURES, INC., 20TH CENTURY-FOX FILM CORP., UNITED ARTISTS CORP., WARNER BROS. PICTURES DISTRIBUTING CORP., PARAMOUNT FILM DISTRIBUTING CORP., UNIVERSAL FILM EXCHANGES, INC.,

Respondents

REPLY BRIEF FOR PETITIONERS

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

FRANCIS ANDERSON,
Counsel for Petitioners.

GRAY, ANDERSON & SCHAFFER
2100 Girard Trust Bldg.,
Philadelphia 2, Pa.

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REPLY BRIEF FOR PETITIONERS

The purpose in filing this brief is to note inaccurate statements in respondents' brief, and to reply only to the two points relied on by respondents, but not by the court below, and hence not covered in petitioners' original brief.

I.

AS TO RES JUDICATA

Respondents point out (R. 14-15) that none of the cases relied on by petitioners contained an application for an injunction, and they argue that a distinction lies in that difference.

at this time, the last contract having expired on April 30, 1951 (R. 107).

8. National retained the advantages of being the exclusive distributor of trailers and specialty posters, as a result of which it could, if it chose, take customers away from petitioners by tying in the renting of standard posters with the renting of specialty posters and trailers, and National has actually exercised that power (R. 12, 15, par. 31, 32, 45, 46, 47).

9. National had the power to injure petitioners in the competitive process by making late deliveries and this was frequently done (R. 13, par. 33-37).

Because of these facts, petitioners averred in their amended complaint that (R. 18):

> "(g) Plaintiffs aver that they entered into said contract against their will and only because they believed that if they refused to enter into the agreement they would be forced to abandon their business altogether; and that the said contract was not a fair or equitable settlement of the litigation but was intended by the defendants to be, and was in fact, a means of perpetuating and extending NATIONAL'S monopolization of the motion picture advertising business."

The situation was summarized in Judge McGranery's opinion sur motion for summary judgment as follows: (R. 67, 69)

> "National Screen's sub-licenses to the plaintiffs also demonstrate the exercise of monopoly power to gain a competitive advantage in violation of the antitrust laws. United States v. Griffith, supra. The agreements limit plaintiffs' operations geographically, in the source of supply they may utilize, and in the customers they may service. National Screen, therefore, not only possesses monopoly power and an intent

to exercise that power, but it has in fact exercised the power.

* * * * *

"The plaintiffs, therefore, face the threat of the irreparable injury of exclusion from competition by National Screen's monopoly, and they are entitled to injunctive relief against the monopoly under Section 16 of the Clayton Act."

In their statement of the case, page 7, respondents represent that: ". . . in depositions both petitioners have admitted, contrary to the allegations in their Amended Complaint, that they chose to accept the settlement of their 'own free will' (R. 122), 'voluntarily after considering the matter carefully' (R. 114-115, 129) . . ."

The facts are as follows: The petitioners were cross-examined on oral depositions by Mr. Nizer, counsel for National Screen Service Corporation, and the statements quoted in respondents' brief are statements made not by the witnesses, but by Mr. Nizer in framing his questions, which were obviously leading, and designed to present a one-sided view of the case. Moreover, the quoted statements are obviously fragmentary, and taken out of context. A reading of the whole of the testimony of the witnesses will show that they both fully backed up—as far as they were permitted by their cross-examiner—the allegations of their complaint that they signed the sublicense agreement unwillingly. Indeed, the depositions clearly establish that petitioners signed only because they lacked the financial resources to continue the fight. (See particularly R. 120, 121, 122, 123, 138, 139, 142, 142-43, 146)

We submit that the least that can be said for the petitioners is that a jury might find that they signed the sublicense agreement only because otherwise they "could not purchase or secure the goods necessary in the conduct of . . . [their] business": Eastman Kodak Co. v. Southern

Photo Materials Co., 273 U. S. 359, 377 (1927). And see also Ring v. Spina, 138 F. 2d 647, 653 (2 C. 1945); and compare Radio Corporation v. Raytheon Mfg. Co., 296 U. S. 459 (1935).

In their brief (p. 24) respondents admit that neither of the courts below adopted their contentions in this regard, as a result of which the point is offered as "an additional, independent ground in support of the judgment below." We submit that it provides no support. The cases cited by respondents are not in point because none of them involved the enforceability of a contract illegal under the antitrust laws.

III.

MISSTATEMENTS IN RESPONDENTS' BRIEF

1.

At page 2 (end of question 1) the five respondents who were not made parties to the first suit (Fox, Warner, Universal, Columbia and United Artists) are referred to as ". . . those whose participation in the alleged conspiracy was pleaded in the prior complaint though they were not named as parties." The actual averment in this regard is quoted below (R. 94-95):

> "26. At or about the same time the defendant-National by or through its wholly owned subsidiary Advertising Accessories, Inc., did negotiate with other major producers of motion pictures in an effort to secure similar exclusive distribution contracts. Such negotiations were with Universal Pictures, Inc., and Columbia Pictures, Inc., and subsequently with Twentieth Century-Fox Film Corporation and Warner Bros. Pictures, Inc.
>
> "27. Until the date of this complaint, these negotiations with Universal, Columbia, Fox and Warners have not been consummated."

There was no averment with respect to United Artists.

2.

At page 3, note 2, respondents refer to the reasons of the film companies for entering into the exclusive license agreements with National and state that: "Judge McGranery pointed out that the undisputed facts presented to him showed that the reasons . . . were legitimate business reasons [and] that the producers acted independently", but actually Judge McGranery said no such thing. With respect to the first point all that Judge McGranery said was that respondents' affidavits represented that their reasons were legitimate (R. 61) and with respect to the second point, all that the Judge said was that conclusive proof of joint action was not provided by the record presented to him in the summary judgment proceeding (R. 69, 70).

3.

At page 4, respondents assert that National's exclusive license contract with Loew's was a contract "to manufacture and distribute." Actually the contract was for distribution only (R. 54-56).

4.

At page 8 respondents unqualifiedly state that "the identity of the present claim with the prior one . . . has been conceded by the petitioners in the court below." No citation to the record is given and the statement is untrue.

5.

At page 5 respondents point out that the prices to be paid under the sub-license agreements were lower than those paid directly to film companies. What they fail to note is that the arrangement nevertheless involved an in-

crease in plaintiffs' overall cost of material because of postal expenses and the necessity of contracting to buy more supplies than might actually be needed (R. 131-137).

All of which is respectfully submitted.

FRANCIS ANDERSON,
Counsel for Petitioners.

GRAY, ANDERSON & SCHAFFER,
2100 Girard Trust Bldg.,
Philadelphia 2, Penna.
Of Counsel